



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038-AE45

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rule that governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (CEA) and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

DATES: Effective Date: This interim final rule is effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418-5327 or ericcobene@cftc.gov, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA)¹ requires the head of each Federal agency to periodically adjust for inflation the minimum and

¹ The FCPIAA, Pub. L. 101-410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the act is to establish a mechanism that (1) allows for regular adjustment for

maximum amount of CMPs provided by law within the jurisdiction of that agency.² On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act),³ which further amended the FCPIAA to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation.⁴ Agencies are required to publish interim final rules with the initial penalty adjustment amounts by July 1, 2016, and the new penalty levels must take effect no later than August 1, 2016.⁵

II. Commodity Exchange Act Civil Monetary Penalties

The inflation adjustment requirement applies to any penalty, fine or other sanction that (A) is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. 28 U.S.C. 2461 note. The CEA provides for CMPs that

inflation of civil monetary penalties; (2) maintains the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improves the collection by the Federal Government of civil monetary penalties.

² For the relevant CMPs within the Commission’s jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

³ See 2015 Act, Public Law 114-74, 129 Stat. 584 (2015), title VII, Section 701.

⁴ *Id.*, Section 701(b). Rule 143.8(b) is amended to reflect the change to annual adjustments from “once every four years.”

⁵ 2015 Act, Section 701(b).

meet the above definition and are, therefore, subject to the inflation adjustment in the following instances: Sections 6(c), 6(d), 6b, and 6c of the CEA.⁶

Section 6(c) of the CEA,⁷ as adjusted by the FCPIAA,⁸ currently sets the maximum CMP that may be imposed by the Commission in an administrative proceeding on “any person (other than a registered entity)” for: (1) each violation of Section 6(c) of the CEA or any other provisions of the Act or of the rules, regulations, or orders of the Commission thereunder to the greater of \$140,000 or triple the monetary gain to the violator; and (2) any manipulation or attempted manipulation in violation of Section 6(c) or 9(a)(2) of the CEA to the greater of \$1,000,000 or triple the monetary gain to the violator.

Section 6(d) of the CEA⁹, as adjusted by the FCPIAA¹⁰, currently sets the maximum CMP that may be imposed by the Commission in an administrative proceeding on “any person (other than a registered entity¹¹)” for violations of the CEA or any other provisions of the CEA or of the rules, regulations, or orders of the Commission thereunder to the greater of \$140,000 or triple the monetary gain to the violator.

⁶ 7 U.S.C. 9, 13a, 13a-1, 13b.

⁷ 7 U.S.C. 9.

⁸ See 17 CFR 143.8(a)(1).

⁹ 7 U.S.C. 13b.

¹⁰ See 17 CFR 143.8(a)(2).

¹¹ The term “registered entity” is a defined term under the CEA. Section 1a(40) provides that the term “registered entity” means (A) a board of trade designated as a contract market under section 7 of the act; (B) a derivatives clearing organization registered under section 7a–1 of the act; (C) a board of trade designated as a contract market under section 7b–1 of the act; (D) a swap execution facility registered under section 7b–3 of the act; (E) a swap data repository registered under section 24a of the act; and (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded. 7 U.S.C. 1a(40).

Section 6b of the CEA¹² provides that the Commission in an administrative proceeding may impose a CMP on: (1) any registered entity for not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in the CEA, or (2) any registered entity, or any director, officer, agent, or employee of any registered entity, for violations of the CEA or any rules, regulations, or orders of the Commission thereunder. For each violation for which a CMP is assessed pursuant to Section 6b, the current, FCPIAA-adjusted maximum penalty is set at: the greater of \$1,025,000 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the CEA; and the greater of \$700,000 or triple the monetary gain to such person for all other violations.¹³

Section 6c of the CEA¹⁴ provides that Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States and the court may impose on a CMP on “any registered entity or other person” found by the court to have committed any violation of any provision of the CEA or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap. For each violation for which a CMP is assessed pursuant to Section 6c(d), the current, FCPIAA-adjusted maximum penalty is set at: the greater of \$1,000,000 or triple the monetary gain to such person for manipulation or attempted manipulation in violation of Section 6(c),

¹² 7 U.S.C. 13a.

¹³ 17 CFR 143.8(a)(3).

¹⁴ 7 U.S.C. 13a-1.

6(d), or 9(a)(2) of the CEA; and the greater of \$140,000 or triple the monetary gain to such person for all other violations.¹⁵

III. Inflation Adjustment for Commodity Exchange Act Civil Monetary Penalties

A. Methodology

The inflation adjustment under the FCPIAA, in the context of the CFTC’s CMPs, is determined by increasing the maximum penalty by a “cost-of-living adjustment,” rounded to the nearest multiple of \$1.¹⁶ For purposes of this initial, catch-up adjustment, the cost-of-living adjustment means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of October, 2015 exceeds the Consumer Price Index for all Urban Consumers (CPI-U)¹⁷ for the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law other than the FCPIAA.¹⁸ The amount of the CMP increase is capped at 150 percent of the amount of that civil monetary penalty on the date of enactment of the 2015 Act.¹⁹

B. Civil Monetary Penalty Adjustments

Applying the FCPIAA catch-up adjustment methodology results in the following amended CMPs:

¹⁵ 17 CFR 143.8(a)(2).

¹⁶ FCPIAA Sections 4 and 5.

¹⁷ The CPI-U is published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the Internet. To access this information, go to the Consumer Price Index Home Page at: <http://www.bls.gov/cpi/>. Under the “CPI Databases” heading, select “All Urban Consumers (Current Series)”, “Top Picks.” Then check the box for “U.S. All Items, 1967=100 - CUUR0000AA0”, and click the “Retrieve data” button.

After this initial catch-up adjustment, subsequent annual inflation adjustments will be based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year’s October CPI-U. FCPIAA Section 4(b)(2).

¹⁸ FCPIAA Section 5(b)(2).

¹⁹ Id.

Citation	Description	Year CMP Last Set by Law Other Than Under the FCPIAA¹	CMP Amount Last Set by Law Other Than Under the FCPIAA	Current CMP Amount (Including Prior FCPIAA Adjustments)	Inflation Adjusted CMP Amount²
Section 6(c) of the CEA, 7 U.S.C. 9	Prohibition Regarding Manipulation and False Information [Other Violation (Non-Manipulation)]	2010	\$140,000	\$140,000	\$152,243
Section 6(c) of the CEA, 7 U.S.C. 9	Prohibition Regarding Manipulation and False Information [Manipulation or Attempted Manipulation]	2008	\$1,000,000	\$1,000,000	\$1,098,190
Section 6(d) of the CEA, 7 U.S.C. 13b	Manipulations or Other Violations; Cease and Desist Orders Against Persons Other Than Registered Entities; Punishment; Misdemeanor or Felony; Separate Offenses	2010	\$140,000	\$140,000	\$152,243
Section 6b of the CEA, 7 U.S.C. 13a	Nonenforcement of Rules of Government or Other Violations; Cease and Desist Orders; Fines and Penalties; Imprisonment; Misdemeanor; Separate Offenses [Other Violation (Non-Manipulation)]	1992	\$500,000	\$700,000	\$838,640

Citation	Description	Year CMP Last Set by Law Other Than Under the FCPIAA¹	CMP Amount Last Set by Law Other Than Under the FCPIAA	Current CMP Amount (Including Prior FCPIAA Adjustments)	Inflation Adjusted CMP Amount²
Section 6b of the CEA, 7 U.S.C. 13a	Nonenforcement of Rules of Government or Other Violations; Cease and Desist Orders; Fines and Penalties; Imprisonment; Misdemeanor; Separate Offenses [Manipulation or Attempted Manipulation]	2008	\$1,000,000	\$1,025,000	\$1,098,190
Section 6c of the CEA, 7 U.S.C. 13a-1	Enjoining or Restraining Violations [Other Violation (Non-Manipulation)]	1992	\$100,000	\$140,000	\$167,728
Section 6c of the CEA, 7 U.S.C. 13a-1	Enjoining or Restraining Violations [Manipulation or Attempted Manipulation]	2008	\$1,000,000	\$1,025,000	\$1,098,190

¹ Sections 212 and 221 of the Futures Trading Practices Act of 1992, Public Law 102-546, 106 Stat. 3590 (1992), set maximum CMPs for Sections 6b and 6c of the CEA, 7 U.S.C. 13a, 13a-1, with respect to non-manipulation violations. Section 13103 of the CFTC Reauthorization Act of 2008, Title XIII of Public Law 110-234, 122 Stat. 923 (2008), set maximum CMPs for Sections 6(c), 6b and 6c of the CEA, 7 U.S.C. 9, 13a, 13a-1, with respect to manipulation violations. Section 753 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010), set maximum CMPs for Sections 6(c) and 6(d) of the CEA, 7 U.S.C. 9, 13b, with respect to non-manipulation violations.

² The catch-up cost-of-living adjustment for CMPs last set by law 1992 is 67.728%. The cost-of-living adjustment for CMPs last set by law 2008 is 9.819%. The cost-of-living adjustment for CMPs last set by law 2010 is 8.745%.

The FCPIAA, as amended by the 2015 Act, provides that any increase under the FCPIAA in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.²⁰ Thus, the new CMP amounts may be applied only in Commission administrative or civil injunctive enforcement proceedings that are initiated on or after the effective date of this amendment, August 1, 2016.²¹

IV. Administrative Compliance

A. Notice Requirement

The notice and comment procedures of 5 U.S.C. 553 do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language which mandates that the Commission act in a nondiscretionary matter. Lake Carriers' Ass'n v. E.P.A., 652 F.3d 1, 10 (D.C. Cir. 2011).²²

B. Regulatory Flexibility Act

The Regulatory Flexibility Act²³ requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rule(s) for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law. Because the

²⁰ FCPIAA Section 6.

²¹ Prior to the 2015 Act, the date of the violation determined the inflation-adjusted penalty applicable to the violation. 28 U.S.C. 2461 note, Section 6 (2012) (inflation-adjusted penalty increases applied “only to violations which occur after the date the increase takes effect”). Consequently, rule 143.8 as revised will continue apply the prior violation date specific penalty amount with respect to CFTC enforcement proceedings initiated prior to August 1, 2016. Further, the Commission will strike rule 143.8(c), which memorialized the prior intent of Congress regarding the application of inflation-adjusted penalties, which was amended by the 2015 Act.

²² The Commission has determined that the amendment to rule 143.8 is exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rulemaking and provide other opportunities for public participation, but excludes rules of agency practice, such as those found in part 143 of the Commission’s regulations, and in particular rule 143.8 being revised herein.

²³ 5 U.S.C. 601-612.

Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to regulation 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),²⁴ which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

D. Consideration of Costs and Benefits

Section 15(a) of the CEA²⁵ requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the CMPs in regulation 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory

²⁴ 44 U.S.C. 3507(d).

²⁵ 7 U.S.C. 19(a).

provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in section 15(a), or any other factors.

List of Subjects in 17 CFR Part 143

Civil monetary penalties, Claims.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 143 as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for part 143 is revised to read as follows:

Authority: 7 U.S.C. 9, 15, 9a, 12a(5), 13a, 13a-1(d), 13(a), 13b; 31 U.S.C. 3701-3720E; 28 U.S.C. 2461 note.

2. Amend § 143.8 as follows:

- a. Revise paragraphs (a)(1) through (4) and (b); and
- b. Remove paragraph (c).

The revisions read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) * * *

(1) For a civil penalty assessed pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9, against any person (other than a registered entity):

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016:

(A) For manipulation or attempted manipulation violations:

(1) Committed on or after May 22, 2008, not more than the greater of \$1,000,000 or triple the monetary gain to such person for each such violation; and

(2) [Reserved]

(B) For all other violations:

(1) Committed between November 27, 1996 and October 22, 2000, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation;

(2) Committed between October 23, 2000 and October 22, 2004, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation;

(3) Committed between October 23, 2004 and October 22, 2008, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation; and

(4) Committed on or after October 23, 2008, not more than the greater of \$140,000 or triple the monetary gain to such person for each such violation;

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after August 1, 2016:

(A) For manipulation or attempted manipulation violations, not more than the greater of \$1,098,190 or triple the monetary gain to such person for each such violation; and

(B) For all other violations:

(1) Not more than the greater of \$152,243 or triple the monetary gain to such person for each such violation; and

(2) [Reserved]

(2) For a civil monetary penalty assessed pursuant to Section 6(d) of the Commodity Exchange Act, 7 U.S.C. 13b, against any person (other than a registered entity):

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016, for violations committed on or after August 15, 2011, not more than the greater of \$140,000 or triple the monetary gain to such person for each such violation; and

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior or after August 1, 2016, not more than the greater of \$152,243 or triple the monetary gain to such person for each such violation; and

(3) For a civil monetary penalty assessed pursuant to Section 6b of the Commodity Exchange Act, 7 U.S.C. 13a, against any registered entity or any director, officer, agent, or employee of any registered entity:

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016:

(A) For manipulation or attempted manipulation violations:

(1) Committed between May 22, 2008 and August 14, 2011, not more than the greater of \$1,000,000 or triple the monetary gain to such person for each such violation;

(2) Committed on or after August 15, 2011, not more than the greater of \$1,025,000 or triple the monetary gain to such person for each such violation; and

(B) For all other violations:

(1) Committed between November 27, 1996 and October 22, 2000, not more than \$550,000 for each such violation;

(2) Committed between October 23, 2000 and October 22, 2004, not more than \$575,000 for each such violation;

(3) Committed between October 23, 2004 and October 22, 2008, not more than \$625,000 for each such violation;

(4) Committed between October 23, 2008 and October 22, 2012, not more than the greater of \$675,000 or triple the monetary gain to such person for each such violation; and

(5) Committed on or after October 23, 2012, not more than the greater of \$700,000 or triple the monetary gain to such person for each such violation; and

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after August 1, 2016:

(A) For manipulation or attempted manipulation violations, not more than the greater of \$1,098,190 or triple the monetary gain to such person for each such violation; and

(B) For all other violations, not more than the greater of \$838,640 or triple the monetary gain to such person for each such violation;

(4) For a civil monetary penalty assessed pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. 13a-1, against any registered entity or other person:

(i) In an administrative proceeding before the Commission or a civil action in Federal court initiated prior to August 1, 2016:

(A) For manipulation or attempted manipulation violations:

(1) Committed between May 22, 2008 and August 14, 2011, not more than the greater of \$1,000,000 or triple the monetary gain to such person for each such violation; and

(2) Committed on or after August 15, 2011, not more than the greater of \$1,025,000 or triple the monetary gain to such person for each such violation; and

(B) For all other violations:

(1) Committed between November 27, 1996 and October 22, 2000, not more than the greater of \$110,000 or triple the monetary gain to such person for each such violation;

(2) Committed between October 23, 2000 and October 22, 2004, not more than the greater of \$120,000 or triple the monetary gain to such person for each such violation;

(3) Committed between October 23, 2004 and October 22, 2008, not more than the greater of \$130,000 or triple the monetary gain to such person for each such violation; and

(4) Committed on or after October 23, 2008, not more than the greater of \$140,000 or triple the monetary gain to such person for each such violation;

(ii) In an administrative proceeding before the Commission or a civil action in Federal court initiated on or after August 1, 2016:

(A) For manipulation or attempted manipulation violations, not more than the greater of \$1,098,190 or triple the monetary gain to such person for each such violation; and

(B) For all other violations, not more than the greater of \$167,728 or triple the monetary gain to such person for each such violation.

(b) The Commission will adjust for inflation the maximum penalties set forth in this section on a yearly basis.

Issued in Washington, DC, on June 21, 2016, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Adjustment of Civil Monetary Penalties for Inflation – Commission
Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016-15078 Filed: 6/24/2016 8:45 am; Publication Date: 6/27/2016]